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The scope and application of the principle of universal jurisdiction

Letter dated 17 August 2010 from the Chargé d'affaires a.i. of the Permanent Mission of Madagascar to the United Nations addressed to the President of the General Assembly

Mr. President, I have the honour to transmit herewith the text of a memorandum in English from the High Transitional Authority of Madagascar regarding recent developments and new prospects pursuant to the political agreement signed on 13 August 2010 at Antananarivo among the various political parties, with a view to resolving the crisis and to organizing free, credible, open and democratic elections in Madagascar (see annex).

I should be grateful if you would arrange for the distribution of this document to those concerned.

(*Signed*) Modeste **Randrianarivony**
Deputy Permanent Representative
Chargé d'affaires a.i.

10-57513 (E) 181010 221010

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Annex to the letter dated 17 August 2010 from the Chargé d'affaires a.i. of the Permanent Mission of Madagascar to the United Nations addressed to the President of the General Assembly

[Original: English]

Chapter one

New perspectives for a crisis exit

I. Origins of the new perspectives

The failure of the negotiations in Pretoria led the President of the High Transitional Authority to take his responsibilities to accelerate the process of solving the political crisis that has prevailed in Madagascar for 16 months now. Thus, His Excellency, Mr. Andry Nirina Rajoelina, in his speech addressed to the nation on 12 May 2010, solemnly declared that he would not be a candidate in the elections to be organized by the transition regime. This presidential commitment is aimed at guaranteeing the neutrality of the future elections, which constitutes the only democratic way to solve the actual crisis.

On 19 May 2010, the President also announced that he was no longer the Chief of the "mouvance Rajoelina". This decision simply marks the end of the concept of "mouvances".

These two fundamental decisions constitute the origin of these new perspectives to put an end to the crisis.

These new perspectives rest on four axes set out in the road map announced by the President at the time of his speech on 12 May 2010:

1. To promote the intra-Malagasy approach aimed at solving the crisis

2. To promote a globalized approach while allowing the participation of all vital forces of the nation, and therefore surpassing the concept of "four mouvances"

3. To promote recourse to the people's sovereign power through the organization of elections (constitutional referendum, legislative and presidential) within a reasonable time frame

4. To initiate the process of drafting the Constitution for the Fourth Republic through the organization of a national conference

In order to guarantee the neutrality of this process, the President invited civil society and the Committee of the Sages to coordinate the implementation of the new road map.

II. The creation of independent structures for the implementation of the new perspectives

In his declaration on 12 May 2010, President Andry Rajoelina launched a solemn call to all citizens, men and women of good will, politicians, all members of civil society, religious community, and armed forces to work together in terms of the initiatives that he proposed.

This call has reached out and led to the creation of two neutral and independent entities:

- The Committee of Sages (Ray aman-dreny mijoro).
- The National Coordination of the Organizations of Civil Society (CNOSC).

According to the founders, these two entities remain open to all personalities of goodwill, to all entities of civil society, without exclusion and without discrimination, who wish to bring their know-how and their experiences to help solve the crisis.

1. The "ray aman-dreny mijoro" (Committee of Sages)

The Committee is composed of personalities of goodwill from different horizons exercising no function in any institution of the transition.

This is how ex-presidents of institutions, Prime Ministers, members of the Government, members of the parliamentary Assemblies, general officers, the religious communities, academics, labour unions, leaders of civil society and traditional chiefs volunteered to bring their contribution to finding a solution to the crisis. Their main mission is to encourage a dialogue between the Malagasy political parties and to supervise the organization of the National Conference that will set the new bases for the Fourth Republic.

The Committee of Sages is currently led by an office presided by pastor Ramino Paul from the Madagascar Church of Jesus Christ, the former secretary general of the aforementioned Church. He was also the President of the "Constitution" commission during the national forum of 1992 that set the bases of the Third Republic.

The secretary general is a priest of the Roman Apostolic Catholic church.

The members of the bureau have been elected by the general assembly of the Committee of the Sages.

2. The coalition of the organizations of civil society (COSC)

The coalition of the organizations of civil society is the result of the unification of several associations of groupings of associations of civil society. At its origin, it was composed of 17 members; and the number of members has reached 30 on 30 June 2010.

The coalition is conducted by a coordinating bureau composed of seven members chosen together by the associations and groupings. The members of the coordinating bureau and the organization committee are independent personalities who do not exercise any State-controlled functions.

The main role of the coalition of the organizations of civil society is to implement the decisions set by the Committee of Sages and especially to organize the preliminary consultations and the national conference.

It is important to underline that the State only helps facilitate while remaining neutral in the organization of these consultations.

III. Actions to be undertaken

The actions are guided towards two directions:

- The organization of different consultations at the local and national levels (Dinika santatra, or preliminary meetings, and National Conference);
- The approach of the different political leaders and the entities of civil society to get their adherence to the process of resolution of the crisis so that the solution will be adopted unanimously and in a consensual manner.

The organization of different consultations at the local and national levels

In accordance with the decisions concluded unanimously by the Committee of Sages and the coalition of the organizations of civil society, two consultations aimed at collecting the propositions of crisis exit perspectives and on the main themes of the Constitution of the Fourth Republic must be organized.

1. The "Dinika Santatras" (preliminary dialogues)

The "Dinika Santatras", or preliminary dialogues, according to the promoters, who in this case are the Ray aman-dreny mijoro, or Committee of Sages, and the coalition of the organizations of civil society, involved populations in each of the 119 districts. The vision and the aspirations of these communities will be the root elements of the resolution of the crisis, as well as the recommendations for the future Constitution, which should be discussed at the "Fihaonambem-pirenena", or National Conference.

2. The National Conference

The National Conference is one of the main demands of all political actors of the nation for finding an adequate and durable solution to the Malagasy crisis. It will also constitute a process of dialogue and decision to set the major orientations of the Constitution of the Fourth Republic.

At present, civil society invites all political movements and all components of society to participate in this national consultation, which is an important stage in the resolution of the crisis.

The National Conference will be held in the capital from 30 August to 3 September 2010 and will be organized by civil society together with the Committee of the Sages, who will work cooperatively with political parties to determine the terms of reference of the National Conference.

IV. The Constitutional Consultative Committee

The ultimate objective of the transition regime is to establish the Fourth Republic. This requires the drafting and the adoption of a new Constitution. To this end, a Constitutional Consultative Committee was created.

The Constitutional Consultative Committee is composed of personalities from the academic or judicial world and experts in constitutional law and in administrative science. The members do not adhere to any political party.

The President of the Constitutional Consultative Committee is a magistrate, Mr. Florent Rakotoarisoa. He was a former High Counselor at the High Constitutional Court of Madagascar and is also an ex-ambassador of Madagascar in Canada.

According to decree No. 2010-273 of 12 May 2010, the role of the Constitutional Consultative Committee is to propose to the Government one or two draft constitutions.

To achieve its mission, the Constitutional Consultative Committee has already accomplished several tasks:

1. Collection and compilation of all pre-draft Constitutions and all constitutional studies prepared by political parties, entities of civil society and common citizens. On 30 June 2010, up to 320 drafts or studies had been submitted by the Committee

2. Audition of various political individuals having exercised the functions of chief of institutions under previous regimes: heads of State, Prime Ministers, Presidents of the Senate, Presidents of the National Assembly, Presidents of the High Constitutional Court

Audition of the leaders of political parties, labour union leaders, magistrates, different associations that prepared draft Constitutions or documents of reflection on guidelines for the future Constitution

3. Compilation of the results of the previous thematic workshops and national consultations organized since the establishment of the transition regime and even before this period (national dialogues, April 2009; national workshops, January, February and March 2010)

4. The writing of one or two draft Constitutions in the context of the National Conference, which will set the principal guidelines for the drafting of the new Constitution

5. Presentation of the draft Constitution(s) to the Government, which will decide on the definitive draft to be submitted to the referendum in accordance with the guidelines set by the National Conference

V. The role of the international community

The intra-Malagasy approach to find a solution to the crisis does not mean that the actual regime refuses the support of the international community in the process of a return to constitutional order. On the contrary, it is the wish of the current transitional authorities that the international community bring its support to the current process initiated by civil society and the political parties.

This support can be envisaged at different levels and in different domains.

1. Regarding the actions of the coalition of the organizations of civil society:

Some entities of civil society expressed their apprehension as to financing that comes from the State in order to sustain their independence. Incumbents of the transitional regime will not make any objection if the international community decides to give its support to the initiatives of the organizations of civil society.

2. Concerning the Independent National Electoral Commission and the Constitutional Consultative Committee:

According to the decrees on the Independent National Electoral Commission (CENI) and the Constitutional Consultative Committee, these organs can hire consultants who may be international or foreign experts. This possibility marks the will of the transition regime to agree to call on international expertise in the

organization of future electoral processes, as well as in the drafting of the new Constitution.

This is how the Constitutional Consultative Committee received professor Gaia, as a contributing expert from the International Organization of la Francophonie.

Likewise, the Independent National Electoral Commission had working sessions with European Senator Paul Wille.

3. With regard to elections:

The electoral code allows international observers to supervise the elections in Madagascar. Thus, the missions of international observers will be welcomed on the territory of the Republic, to follow up on the upcoming electoral operations.

Partial conclusion

The new perspectives for a crisis exit will be implemented according to the following steps:

1. Organization of the preliminary conferences or local conferences in each of the 119 districts

2. Organization of the National Conference, whose main mission is to define the principal guidelines for the new Constitution of the Fourth Republic and to debate important questions such as national reconciliation

3. Preparation of draft Constitution(s) by the Constitutional Consultative Committee

4. Organization of a referendum for the definitive adoption of the new Constitution

5. Organization of the first legislative elections of the Fourth Republic

6. Organization of presidential elections on the basis of the new Constitution

The political situation in Madagascar has also evolved since the beginning of the dialogue between President Rajoelina and the Malagasy political parties.

Chapter two

I. Recent developments in the process of resolving the crisis

1. Preliminary dialogues

The Committee of Sages and the coalition of the organizations of civil society organized preliminary dialogues, held in each of the 119 districts of Madagascar on 28, 29, 30 and 31 July 2010.

These consultations involved a large part of the vital forces of the nation, with the adherence of several political parties. The participants expressed their opinions freely. Thus, several propositions and recommendations have been collected and will be submitted to the National Conference, a process of decision that will be held

from 30 August to 3 September 2010. According to the numbers reported by the organizational committee, 28,000 people participated in these preliminary dialogues.

According to the information gathered by the Committee of Sages and the coalition of the organizations of civil society, questions were asked regarding the following:

- Determine a setting for the success of the transition while taking into account the realities in the field.
- Define a road map for the transition.
- Establish clear rules accepted by all political forces for the organization of free, transparent and elections monitored in accordance with international expectations.
- Determine the main principles that will guide the drafting of the new Constitution for the Fourth Republic.
- Specify the process and the concrete modes of the implementation of national reconciliation.

2. The National Coordination of the Organizations of Civil Society

The two main organizations of civil society, the alliance of the organizations of civil society, which is favourable to the application of the Maputo Agreements, and the coalition of the organizations of civil society, initiator of the preliminary dialogues with the Ray aman-dreny mijoro (Committee of Sages) instituted the National Coordination of the Organization of Civil Society (CNOSC). According to their declaration, the entities of civil society give themselves, through this common organ, the means to participate actively in the mediation effort between the protagonists in the political crisis. In this manner, they are also able to contribute efficiently to the steps towards the renewal of the Republic.

A partnership agreement was reached between these two main entities of civil society. According to this agreement, the main mission of the National Coordination of the Organizations of Civil Society is to assume the mediation for a consensual solution to the crisis towards the renewal of Republic. CNOSC is composed of seven titular members and a substitute designated by and representing the founding organizations.

For the alliance of the organizations of civil society, the representatives are:

- Lalao Randriamampionona, titular
- Noro Andriamamonjiarison, titular
- Serge Zafimahova, titular

For the coalition of the organizations of civil society, the representatives are:

- Aristide Velompanahy, titular
- José Rakotomavo, titular
- André Rasolo, titular

For KMF/CNOE, the representatives are:

- Ernest Razafindraibe, titular
- Voshangy Raveloson, substitute

The values of CNOSC are:

- To keep the cohesion and the unity of the group of the organizations of civil society, initiators of the process
- Neutrality and impartiality throughout the process vis-à-vis the current power holders, political movements and all other stakeholders
- The solemn commitment of the members of CNOSC not to exercise any function within the executive branch of the new transition
- The independence of CNOSC, especially vis-à-vis its stakeholders.

3. The birth of a new dialogue framework for political parties

The dialogue framework was set up by the initiatives of political parties, aware of the importance of finding a solution to put an end to the crisis. In the beginning, it has only nine members, but currently the framework has welcomed the adherence of more than 50 parties and political associations known nationwide.

The idea of a dialogue framework of the political parties came up when two groups of political leaders joined together to exchange information. These political leaders then realized that they had a few goals in common:

- To find a solution to the actual crisis
- To preserve the supreme interest of the nation

Consequently, they decided to continue their meeting and discussions in order to come up with a political agreement.

The first meeting of the political parties' dialogue framework was held on 15 July 2010 and involved 28 political parties, including parties supporting the current regime and those on the opposition side, such as the TIM party of the ex-president of the Republic, Marc Ravalomanana, represented by its co-founder, Mr. Raharinaivo Andrianantoandro.

On 3 August 2010, these political leaders reached a minima agreement. The main points of this agreement are:

- President of the transition: Andry Rajoelina
- Establishment of a Government of National Unity
- The extended and inclusive High Transitional Authority will be the parliament of the Transition
- Reconstitution of CENI and the High Constitutional Court

The members of the dialogue framework announced that they would not interfere in the roles of the Committee of Sages and civil society. Nevertheless, they are convinced that the crisis that currently prevails in the country is the result of the actions of the politicians. Thus, it should be the politicians' task to find a solution to bring the country out of the current political impasse in respect of the supreme interest of the nation.

II. Reconciliation of President Andry Nirina Rajoelina with the dialogue framework

The minima agreement was presented to His Excellency the President of the High Transitional Authority on Friday, 6 August 2010, at the State palace of Iavoloha.

During this meeting, President Andry Nirina Rajoelina declared that he was not against this praiseworthy initiative of the political parties and that he was prepared to conclude an agreement in this sense. However, he made it clear that the negotiations should first be centred on the setting up of the electoral calendar. With respect to the wish of the population to have leaders of their choice, the current regime made a priority the organization of just, equitable, free and transparent elections. Only democratic elections can be considered as the best solution to the actual crisis. He also proposed a round table convening all political parties and representatives of the current regime with the aim of concluding a political agreement at that time.

The meeting took place from 9 to 11 August at the International Conference Center of Ivato. It convened more than 80 political parties.

Discussions were based mainly on the imperative need to establish an electoral calendar and the minima agreement drafted by the members of the political parties' dialogue framework.

This political meeting ended with the signature of a political agreement between the political parties and the actual power holders. This agreement marks an important stage in the resolution of the crisis because it is the first agreement within the framework of the intra-Malagasy process.

The signing ceremony took place on Friday, 13 August 2010; the agreement had already been initialled by several political parties and associations on Wednesday, 11 August 2010.

III. The political agreement: associated political parties and the present regime

All parties and political associations signatories to the political agreement affirmed unanimously that the non-candidacy of Mr. Andry Nirina Rajoelina, President of the High Transitional Authority, in the upcoming elections offered every guarantee of neutrality on the management of the transition and the organization of future elections.

Stakeholders of the agreement are also unanimous as to the necessity to put an end as soon as possible to the transition, and that free, credible, transparent and democratic elections remained the only unavoidable way to attain this objective.

Thus, the political agreement signed by the political parties and the leaders of the transition on 13 August 2010 includes the two critical points:

- The establishment of a concerted electoral calendar
- The setting up of a governance of national unity and a government of national unity

A. The establishment of a concerted electoral calendar

All participants in the political meeting at Ivato affirmed the need to organize elections as soon as possible to allow the sovereign people to express their choice.

From then on, the political parties decided unanimously that elections would be held according to the following imperative deadlines:

–17 November 2010: constitutional referendum

–16 March 2011: legislative elections

–4 May 2011: presidential elections

This electoral road map will allow Madagascar to have an elected President by 26 June 2011, national independence day.

B. National Unity Governance

The new political agreement is not based on the concept of "mouvances". It is rather based on a "new inclusiveness" rooted in the identity of every political party. It also took in account propositions from different stakeholders in the process of solving the crisis: the general public, the sages, economic investors, the army and security forces, current power holders, etc.

1. Managing the transition

1.1 Mr. Andry Nirina Rajoelina reconfirmed as being the President of the transition and Chief of State

One of the important points of this political agreement is the acknowledgment by all parties and political associations that Mr. Andry Nirina Rajoelina continues to exercise the functions of President of the transition until the investiture of the first elected President of the Fourth Republic. It is important to underline that some political parties such as the TIM were strongly opposed to the actual regime. This consensus marks an important stage in the normalization of the situation and the return of social peace in Madagascar, because it lowers the risks of conflict that characterized the transitional period.

The "new inclusiveness" also induces the co-responsibility of the political parties and those who are currently in power in the management of State affairs during the period before the elections.

The agreement then brings up several points interpreting the establishment of "a national unity governance".

1.2 Government of National Unity

The Government will be led by a Prime Minister appointed by the President of the transition from among qualified individuals proposed in a concerted manner by the political parties. Members of the Government are appointed by the President upon the Prime Minister's proposition among the chosen qualified individuals presented by the political parties. These appointment mechanisms bring close together political parties in the formation of the new Government.

1.3 Transition Parliament

The future Parliament of the transition will be bicameral: the High Council of the Transition and the Congress. The legislative organ of the transition will reflect the diversity of the political actors of Madagascar.

The High Authority of the actual transition will be transformed into the High Council of the Transition and will be open to qualified individuals presented by the political parties and associations that signed the political agreement. All signatory political parties and associations will be represented in the Congress. The principal mission of the Parliament is to debate and to adopt legislative texts on several important points to examine during the Transition, such as the amnesty, the law on political parties, and possible improvements to the electoral code.

The other State institutions, such as the High Constitutional Court and the Independent National Electoral Commission, remain in their actual status. On the other hand, the representativeness of political parties within CENI will be reinforced.

2. Adherence to the process initiated by civil society and participation at the National Conference

The political agreement shows the political parties' willingness to adhere to the initiatives of civil society in the process of finding a solution to the crisis. However, it exhorts civil society to respect neutrality and impartiality in conducting the mediation.

The political agreement does not hinder the holding of the National Conference. Nevertheless, the signatories invite civil society to define, with the political parties and associations, the terms of reference for the National Conference. The agreement proposes some themes to debate during this fundamental convention as well as the methodology that will guarantee the success of these undertakings.

It is therefore proposed that the National Conference debate and submit some resolutions on several themes, including:

(a) The Constitution of the Fourth Republic (types and regimes);

(b) The amnesty;

(c) National reconciliation;

(d) The statute of the opposition;

(e) The secularism of the State;

(f) Impunity;

(g) The High Judicial court;

(h) Territorial carving;

(i) Inclusiveness with respect to parity;

(j) The conventions to solve insecurity.

Other important texts to be reviewed include:

(a) The electoral code;

(b) The code of communication;

(c) The law on the trade competition;

(d) The law on political parties and their financing.

With regard to the Constitution and the amnesty, these two points are primordial to bringing the country out of crisis. It is therefore up to the National Conference to determine the guidelines for drafting the new Constitution and to set bases for the amnesty law.

3. National reconciliation

The signatory parties reaffirmed the necessity for the national reconciliation to be implemented. A National Reconciliation Committee will be created after the National Conference, which will define its action plans.

In this particular regard, appeasement measures such as the freeing of individuals jailed for political reasons, the amnesty and the reopening of censured medias will be submitted to deliberating instances (National Conference, competent jurisdiction, the Parliament of the transition). The Transition authorities commit to respecting and will apply the decisions adopted by these instances.

4. Adherence to the political agreement

The agreement enters into effect on the date of its signature and remains open for adherence to all political parties and associations that participated in the negotiations of 9 to 11 August 2010.

The signature of the political agreement between the political parties and the actual regime is an important step towards the resolution of the present crisis. It marks the willingness of a large part of the Malagasy society to move forward and bring an end to this political conflict. It also demonstrates through facts the awareness of the political actors as to the imperative need to rely on the fundamental values of our society, namely, solidarity and dialogue.

IV. A historic date: 13 August 2010

The signing ceremony for the political agreement took place at the International Conference Centre of Ivato. All vital forces of the nation, administrative bodies such as the armed services, the judiciary and civil administrators attended the ceremony. Diplomatic representatives of foreign countries including Senegal, Spain, Turkey and France also attended this historic event. In sum, around 1,500 people came to the International Conference Centre to witness and support this memorable event that will shape the future of the nation.

This date is also historic because it marks the willingness of Malagasy politicians to overcome their differences and their antagonism in respect to the superior interest of the nation, while reinforcing cohesion and national solidarity which have become fragile since the beginning of the crisis. Indeed, the most prominent image of this day is the example that has been shown by the TIM (ex-President Marc Ravalomanana's party) spokesperson, Mr. Raharinaivo Andrianantoandro. He was, in fact, the only member of the bureau of this party that led the opposition movement against the transition regime since the beginning of the crisis.

This primary leader of the TIM party has been designated by the Dialogue Framework to read the declaration of the political parties. In his speech, he made a vibrant call to the political class in general and to the people to unite their strengths and work together to bring the country out of the crisis. He also called the three

former Chiefs of State to follow the way of reconciliation opened by the signatories of the agreement. It is also important to note that about 40 parliamentarians of the TIM party were present at the time of the ceremony, thus proving the leadership of the party's spokesperson.

Moreover, most of the political parties signatories to this agreement include political parties that presented candidates in the last presidential election of 2006. These parties were also the most active ones that have animated political life for the past five years, such as the AVI of the former Chief of State and Government Norbert Lala Ratsirahonana, the TIM of ex-President Marc Ravalomanana, the AKFM-Fanavaozana of the former Vice Prime Minister for Foreign Affairs, Ny Hasina Andriamanjato, Leader-Fanilo of the late Herizo Razafimahaleo, the PSDUM of the ex-President of the National Assembly Jean Lahaniriko, and the MTS of the former Mayor of Tamatave Roland Ratsiraka. The parties that have already announced their candidates in the upcoming elections also affixed their signatures: the MDM of the former Vice Prime Minister Pierrot Rajaonarivelo, the Mamafisoa of the ex-President of the Senate Rajemison Rakotomaharo, and the RPM of the ex-minister and deputy Gilbert Raharizatovo. The political association created by Mr. Andry Nirina Rajoelina at the time of his candidacy for mayor in the capital also signed the agreement.

To conclude, the signatories to this political agreement have already begun to approach the parties and those who have not signed yet. A meeting was held with Mr. Fetison Rakoto Andrianirina of the Ravalomanana "mouvance" to explain to him the process initiated by the dialogue framework. Besides, this opening of the agreement to the other political movements constitutes the priority henceforth for the signatories.

Conclusion

At the date of writing of the present memorandum, it is allowed to declare that the intra-Malagasy process of solving the crisis is definitely engaged and is on the right track.

Support or simply encouragement from the international community will be a strong signal that will permit to move forward quickly towards the adherence of all political actors to the process. In any case, it is noted that at present, a large majority of the political parties having a significant weight on the electoral plan are highly supportive of the political agreement.